

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AIR PRODUCTS LLC,

Plaintiff,

vs.

CIECH, S.A.,

Defendant.

Case No. 5:12-cv-6953-JKG

DEFENDANT'S UNOPPOSED MOTION TO FILE DOCUMENTS UNDER SEAL

Defendant respectfully requests that the Court permit the filing under seal of the Memorandum of Law in Support of Defendant's Motion to Dismiss, as well as the Declaration of Jonathan E. Paikin in Support of Defendant's Motion to Dismiss, dated April 19, 2013, and the exhibits attached thereto ("Paikin Decl.").

The contract at issue prohibits the disclosure of some of the documents attached to the Declaration and some of the facts discussed in the Memorandum.¹ Specifically, Paragraph 4 of the Second Amended and Restated North American Supply Contract between Plaintiff, its European affiliate, and Defendant's subsidiary is a confidentiality provision that prohibits public disclosure of the contract itself (attached to Paikin Decl. as Ex. 3) and any addenda to the contract (attached to Paikin Decl. as Ex. 6). Paragraph 24 of that contract prohibits public disclosure of documents and information exchanged

¹ "Documents containing trade secrets or other confidential business information may be protected from disclosure" notwithstanding the presumption of public access to judicial records. *Leucadia, Inc. v. Applied Extrusion Technologies, Inc.*, 998 F.2d 157, 166 (3d Cir. 1993); *see also, e.g., Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598, 98 S. Ct. 1306, 1312, 55 L. Ed. 2d 570 (1978) ("[C]ourts have refused to permit their files to serve as ... sources of business information that might harm a litigant's competitive standing[.]").

between the parties in connection with arbitration proceedings (attached to Paikin Decl. as Exs. 13 and 14). Portions of the Memorandum of Law discuss the contractual terms and positions taken by the parties in the arbitration, and are thus also confidential.

Defendant does not consider other exhibits attached to the Declaration to be confidential and may oppose any request to seal the documents for the duration of the litigation. Nor does it consider the majority of the Memorandum to be confidential. Defendant anticipates, however, that Plaintiff may contend that some or all of the additional exhibits contain confidential business information that should be protected from public access, and that it may wish to redact portions of the Memorandum in Support that Defendant does not consider confidential. To ensure that Plaintiff has an opportunity to be heard on this issue, Defendant has filed the entire Memorandum and Declaration (with attached exhibits) under seal and asks the Court to seal both documents temporarily until Plaintiff states its position on whether and to what extent the documents should remain sealed. Counsel for Plaintiff agrees with this manner of proceeding and does not oppose this motion

Accordingly, and pursuant to Local Civil Rules 5.1.2 and 5.1.5, Defendant is filing with the Clerk of Court hard copies of the Memorandum in Support of Defendant's Motion to Dismiss and of the Declaration of Jonathan E. Paikin in Support of Defendant's Motion to Dismiss and attachments thereto.

April 22, 2013

Respectfully submitted,

WILMER, CUTLER, PICKERING,
HALE and DORR LLP

/s/ David Ogden

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ORDER

NOW, this _____ day of April, 2013, upon consideration of Defendant's Unopposed Motion to File Documents Under Seal, filed April 22, 2013, which motion is unopposed,

IT IS ORDERED that the motion is granted.

James Knoll Gardner
United States District Judge